PO-4143

Ombudsman's Determination

Applicant	Mr Andrew Jeffery
Scheme	Jeffery Flanders (Consulting) Ltd Retirement & Death Benefit Scheme (**the Scheme**)
Respondent	Friends Life

Complaint Summary

Mr Jeffery complains that Friends Life (incorporating AXA Sun Life):

- failed to carry out his instructions in December 2006 to remove Suntrust Ltd as Special Trustee of the Scheme; and
- incorrectly deducted Special Trustee fees since December 2006 from the Scheme.

He also alleges that Friends Life has provided him with a generally substandard administrative service for the Scheme over the years.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against Friends Life because the evidence falls short of establishing that Friends Life had failed to carry out the instructions which Mr Jeffery says he gave them in December 2006 to remove Suntrust Ltd as Special Trustee of the Scheme. Also, any administrative failings did not cause Mr Jeffery particular distress or inconvenience.

Detailed Determination

Material Facts

1. The Scheme was established by Jeffery Flanders Ltd, the original Principal Employer, and governed by a Definitive Trust Deed dated 29 June 1995 (**the Trust Deed**). It is a small self-administered pension scheme (**SSAS**). The Managing Trustees of the Scheme were Mr Jeffery and his father whilst Suntrust Ltd was the Special Trustee (Pensioneer Trustee prior to 6 April 2006). Together they formed the Trustees of the Scheme (**the Trustees**).

2. Mr Jeffery lived at Woodland House in Ifold, West Sussex from 1990 until 2006 when he rented out the property to tenants. Friends Life says that Mr Jeffery did not inform them at the time about this letting arrangement or that his home address had changed. Mr Jeffery, however, asserts that a postal redirection service has been in place since 2006 for this address and if Friends Life had sent correspondence there, they would "undoubtedly have obtained a response" from him.

3. According to a "Deed to Change the Principal Employer" dated 1 December 2004, JFL Consulting Ltd, whose registered address was at Sanford House in Horsham, West Sussex succeeded Jeffery Flanders Ltd as the Principal Employer (from 1 June 2000).

4. In May 2005, Friends Life sent the Scheme renewal pack to UKFSCL (who was Mr Jeffery's financial intermediary until 2006).

5. Friends Life says that such packs, sent to the Managing Trustees each year approximately six weeks prior to the renewal date, 29 June, always included a statement that if a Special Trustee (Pensioneer Trustee) fee was not paid within 28 days of the renewal date, it would be deducted from the Scheme.

6. As the Managing Trustees failed to pay this fee to Friends Life in 2005, it was taken from the Scheme.

7. The Managing Trustees appointed Friends Life to provide advice and actuarial services for the Scheme from 6 April 2006 (in accordance with the Pensions Act 1995). The appointment letter (date stamped 9 August 2006) showed that the Managing Trustees' contact address was The Old Barn in Loxwood, West Sussex.

8. Friends Life sent Cater Allen Ltd a letter on 11 April 2006 to inform them that Suntrust Ltd was no longer the Pensioneer Trustee of the Scheme and should be removed as a co-signatory to the Scheme's bank account. On the next day, Friends Life rescinded their incorrect request by letter.

9. In May 2006, Friends Life sent a letter to the Sanford House address to inform Mr Jeffery that a loan of £30,000 was due for repayment to the Scheme (by the Principal Employer). They also sent to the Old Barn address the documents which he had requested in order to change the Principal Employer.

10. The "Deed to Change the Principal Employer" dated 14 July 2006 and the HM Revenue & Customs (HMRC) form PS 257 completed by the Managing Trustees in May 2006, showed that Jeffery Flanders (Consulting) Ltd (whose address was Peel House in Horsham, West Sussex) had become the new Principal Employer from 15 January 2005. This deed also showed that Suntrust Ltd was still the Special Trustee of the Scheme and Jeffery Flanders (Consulting) Ltd would take upon the obligations and liabilities of the Scheme from JFL Consulting Ltd.

11. On 18 July, Friends Life sent Mr Jeffery an e-mail to inform him that the Scheme Actuary:

    - was preparing an Actuarial Valuation Report (AVR) with an effective date of 28 June 2004; and

    - could not sign the AVR until he had been re-appointed as the Scheme Actuary by the Managing Trustees.

12. The Managing Trustees re-appointed Friends Life in July 2006 "to provide advice and services relating to the actuarial affairs of the Scheme".

13. The Managing Trustees failed to pay the Special Trustee fee in 2006 and it was deducted from the Scheme by Friends Life.

14. On 1 December 2006, Friends Life sent Mr Jeffery a copy of the AVR and also an invoice for the work done preparing it. The covering letter said that the invoice should be settled within four weeks or the fee would be deducted from the Scheme.

15. Mr Jeffery says that on 16 December 2006 he sent a letter (by fax) to Friends Life informing them that he no longer required their services; he had sent this letter from his property in France.

16. The letter dated 16 December, which was unsigned, said :

    > "Further to our earlier discussions regarding Actuarial Fees I have had a chance to look through the A Day Guide you sent me in July 2006.
    >
    > It is now obvious to me that in view of the new legislation that now apply to my SSAS, I can do the "Accounting" myself and therefore there is no need for AXA to act for me or my Employer (My Firm) anymore [sic].
    >
    > Would you please note your records and/or let me have any declarations that you require myself and my father to sign as trustees if necessary."

17. Friends Life say that they have no record of ever receiving this letter.

18. In a letter dated 8 January 2007, Mr Jeffery informed Friends Life that he was concerned at having to pay £300-£400 for actuarial services because JFL (Consulting) Ltd was no longer trading and therefore unable to pay. He said that it would be unfair for this fee to be deducted from the Scheme because it would reduce his benefits in the Scheme.

19. Friends Life replied in a letter sent to the Old Barn address that the Trust Deed allowed for fees which could not be met by the Principal Employer to be taken from the Scheme assets. They also informed him that the AVR should have submitted to HMRC by 28 June 2005 but they did not receive copies of the Scheme accounts for the years ended 28 June 2002, 2003 and 2004 in order to prepare the AVR until 25 July 2005 (from the Managing Trustees).

20. On 2 February, Mr Jeffery sent another letter to Friends Life which said:

> "I do not have a problem with the principle of the work done and the fact that it needs to be paid but the fact remains however that Jeffery Flanders (Consulting) Ltd took over the scheme in January 2005 but did not take over the responsibility for a previous limited company's debt.
>
> I do not believe that the scheme can transfer debts owed by one limited company to another under the policy terms…
>
> I want to ensure that I am not in the position of facing a bill that is at an unreasonable level…It seems to me that it is the Scheme Rules that allow the charge to be bounced from one company to another, whereas I am not convinced that it is contractually and legally allowable."

21. Friends Life responded that Jeffery Flanders (Consulting) Ltd was responsible for paying such fees when it became the Principal Employer. They sent a letter to the Peel House address on 12 February 2007 to inform Mr Jeffery that the AVR fee had been deducted from the Scheme.

22. On 21 March, Friends Life sent Mr Jeffery a letter which said:

> "Further to our recent conversations, I can confirm that on receipt of the scheme accounts for the year ended 28 June 2002, AXA were made aware of the £100,000 special contribution which was paid along with the annual contribution of £832.
>
> This information was shown in the AVR dated 28 June 2004 a copy of which was forwarded to the Inland Revenue on 1 December 2006."

23. Earlier that month, Mr Jeffery had sought the assistance of Friends Life to deal with an enquiry made by HMRC about this £100,000 special contribution into the Scheme by faxing to them from the Old Barn address copies of his correspondence with HMRC. In his letter date 12 January 2007 to HMRC, Mr Jeffery informed them that

the "Scheme closed on 15 January 2005 and the Trustees retired." The front sheet of the fax to Friends Life said:

> "Any ideas to make Mr T (HMRC) see sense would be appreciated."

24. In May 2007, Friends Life sent the Scheme renewal pack to the Woodland House address. The Managing Trustees did not pay the Special Trustee fee in 2007 so it was deducted from the Scheme. Friends Life sent notification of this deduction to the same address.

25. Mr Jeffery says that in May 2007 he telephoned Friends Life from his French property to remind them that he no longer required the services of Suntrust Ltd as Special Trustees. (He adds that the provider of his telephone service in France originally told him that they had kept an itemised record of this call but have now informed him that they cannot produce it.)

26. In May 2008, Friends Life sent the Scheme renewal pack to the Peel House address. They also sent a letter to this address in June 2008 to inform Mr Jeffery that they had deducted the 2008 Special Trustee fee from the Scheme.

27. In April 2009, Friends Life, after conducting a Companies House search, discovered that Jeffery Flanders Ltd had been dissolved in August 2003 and that there was "an active proposal to strike off" Jeffery Flanders (Consulting) Ltd. They sent Mr Jeffery on 6 April a letter to the Peel House address which said:

> "I am writing to you in relation to benefits that you still hold in the…scheme. I note from our file that you left the service of the Principal Employer some time ago although a decision has not been made about your benefits. As the Principal Employer no longer exists the scheme must be wound up and the Pensions Regulator has set a two year limit for the wind-up which expires in March 2010.
>
> Before the wind-up can be achieved, we need to carry out relevant calculations for your scheme taking into account the changes brought about by A Day…"

28. Friends Life sent Mr Jeffery a reminder for payment of 2009 Special Trustee fee to the Peel House address. They also subsequently used this address to inform him that they had deducted it from the Scheme.

29. In January 2010, Friends Life sent Mr Jeffery a letter addressed to the Peel House address in an envelope showing the Old Barn address. This letter was returned marked "addressee gone away" on the envelope.

30. In April 2010, Friends Life sent another letter to the Old Barn address which was also returned marked "addressee gone away."

31. In May 2010, Friends Life sent the Scheme renewal pack to the Peel House address.

32. In January 2011, Friends Life sent a letter to the Peel House address to notify Mr Jeffery that the 2010 Special Trustee fee had been deducted from the Scheme.

33. In May 2011, Friends Life sent Scheme renewal packs to both the Woodland House and Peel House addresses. The pack sent to the latter address was returned marked "addressee gone away".

34. In June 2011, a Special Trustee fee payment reminder was sent to the Woodland House address. Friends Life subsequently sent a letter to the same address to inform Mr Jeffery that this fee had been deducted from the Scheme.

35. In May 2012, Friends Life sent the Scheme renewal pack to the Woodland House address. In August and November 2012, they sent a Special Trustee fee reminder and notification that it had been deducted from the Scheme respectively to the same address.

36. Friends Life sent a letter to the Woodland House address on 10 April 2013 which said that:

> "On review of the scheme it appears that you left service of the principal employer some time ago although a decision was never made regarding your benefits.
>
> As there is no longer a principal employer under the scheme it must be wound up in order to comply with the rules that govern the scheme. The wind-up was triggered following the proposal to strike Jeffery Flanders (Consulting) Ltd and this now means that the benefits you hold under the scheme must be transferred to an alternative arrangement so the scheme can be wound up.
>
> Your arrangement entered wind up prior to 6 April 2006 and the Pensions Regulator has previous set a deadline of March 2010 for the wind up to be completed. Whilst it is not clear what action they will take as the deadline has been missed it is reasonable to assume they will expect you to have taken positive steps which will lead to the wind up.
>
> We did write to you previously regarding this matter but that was quite some considerable time ago and we do need to make progress as we cannot allow the situation of this scheme to continue indefinitely.
>
> The first stage of the transfer/wind up is to establish your individual benefit fund and we would also wish to identify your tax free cash position at 5 April 2006…"

37. In May 2013, Friends Life sent the Scheme renewal pack to the Woodland House address.

38. Mr Jeffery wrote to Friends Life on 29 May to inform them that:

- he had not received any correspondence from them since 2006 about the Scheme;
- he had written to both Friends Life and Cater Allen Ltd on 16 December 2006 to notify them that he no longer required Suntrust Ltd as the Special Trustee following the change in HMRC rules;
- he had raised this matter again in May 2007 during a telephone conversation with Mr C of Friends Life; and
- it was only because he was in the process of changing the Scheme's bankers and they had told him that they still had to liaise with Friends Life which has prompted this action.

39. Mr Jeffery asked Friends Life to confirm receipt of his instructions given in December 2006 and also to:

- refund the Special Trustee fees taken from the Scheme since that date; and
- notify Cater Allen Ltd that he had removed Suntrust Ltd as the Special Trustee.

40. Friends Life informed Mr Jeffery that they did not have his letter of 16 December 2006 and suggested the quickest way to resolve this matter would be for him to make a fresh application to remove Suntrust Ltd as the Special Trustee. They also said that they were not prepared to refund the Special Trustee fees deducted since 2006 given the limited information available of the situation.

41. On 29 May, Cater Allen Ltd wrote to Friends Life to inform them that they had received two letters in 2006 from them and sought clarification on which letter described the correct role(s) of Suntrust Ltd.

42. On 31 May, the Managing Trustees signed a form entitled "Implications on post removal administration". By doing so, the Managing Trustees confirmed to Friends Life that they understood the implications of no longer having Suntrust Ltd as the Special Trustee which included becoming responsible for:

- amendments to the Scheme rules in order to take into account future changes to legislation or HMRC rules;
- the addition or removal of employers and trustees to the Scheme;
- ensuring the suitability of the Scheme investments;
- filing reports and returns with HMRC on-line;
- appointing an actuary to provide advice in accordance with the Scheme rule (because the current Scheme Actuary would have to resign);

- calculation of retirement and death benefits; and
- the day-to-day running of the Scheme.

43. The form also showed that the Managing Trustees would have to remove Suntrust Ltd from any investments and bank accounts of the Scheme at their own expense.

44. Friends Life informed Cater Allen Ltd on 7 June 2013 that they were unsure what had happened in April 2006 but Mr Jeffery had recently confirmed that he wanted to remove Suntrust Ltd as the Special Trustee.

45. On the same day, Friends Life sent Mr Jeffery:

    - a copy of the Deed confirming the retirement of Suntrust Ltd as the Special Trustee of the Scheme from 3 June 2013; and
    - a notice of their resignation as advising Actuary to the Scheme.

46. Friends Life informed him that they had sent a copy of this deed to Cater Allen Ltd and also notified them that Suntrust Ltd should be removed as a co-signatory to the Scheme’s bank account. They reminded him that the Scheme had to be wound up following the liquidation of the Principal Employer (unless a rule amendment could be adopted to allow the Scheme to continue).

47. Friends Life sent a letter dated 26 September 2013 to the Woodland House address informing Mr Jeffery that a Special Trustee fee of £1,080 for the year commencing 29 June 2013 had been deducted from the Scheme due to non-payment. When Mr Jeffery complained about this deduction in November, Friends Life replied that they had made a mistake and apologised to him for their error.

48. Friends Life reimbursed the fee incorrectly deducted to the Scheme. They also sent him in December 2013 a goodwill compensation payment of £25 in recognition of the inconvenience caused to Mr Jeffery by their mistake. Mr Jeffery has rejected this award which he considers derisory and complained to me.

Summary of Mr Jeffery's position

49. Friends Life wrongly continued to debit Special Trustee service fees from the Scheme after he had instructed them by letter on 16 December 2006 and during a telephone call in May 2007 that he no longer required the services of Suntrust Ltd.

50. He received a guide from Friends Life in July 2006 providing details of the changes made to the SSAS Rules from 6 April 2006. After studying this guide, he had intended to remove Friends Life as Special Trustee. His only reason for re-appointing Friends Life as Scheme Actuary in July 2006 was therefore to give them the opportunity to finish preparing the AVR with an effective date of 28 June 2004.

51. Friends Life incorrectly typed "Iford" as "Ilford" on some of the letters which they sent him. (The county and postcode were the same for all such letters though).

52. He had been complaining to Friends Life about the poor administrative service provided for the Scheme even before instructing them in December 2006 to remove Suntrust Ltd as the Special Trustee.

53. He had also previously made it clear to Friends Life that he no longer wanted Suntrust Ltd as the Special Trustee from 6 April 2006.

54. He has not kept a copy of the letter which he sent to Cater Allen Ltd on 16 December 2006.

55. Friends Life deliberately withheld evidence which would corroborate his allegations against them, in particular his letter of 16 December 2006 and the note of his telephone conversation with Mr C in May 2007. (Friends Life has strongly refuted this allegation).

56. Friends Life charged him over £1,500 each year between 2007 and 2013 for "doing absolutely nothing". In his view, the phrases "rip off charges" and "work of no value" should apply to Friends Life's conduct during this period.

57. Mr Jeffery contends that:

> "I make clear that since 2007 I was in the position of knowing that I DID NOT NEED……
>
> a) the services of AXA;
>
> b) AXA's renewal documentation to "review" the investments or spread the risk;
>
> c) AXA to calculate the current fund values
>
> ……and that this had been agreed with AXA
>
> I worked in the Financial Services industry between 1982 and 2002 and had no need and continue to have no need of any advisory services from anyone else or any Financial Services firm to be able to make my own decisions as to the investments and/ or manage my pension policies.
>
> It is totally wrong for anyone to think that EVEN IF I had not received papers from AXA during the period 2007 that in some way I would need to have them or this failure would alert me to the need to contact AXA.
>
> …I had no need to hear from AXA to be "comfortable" that I could leave my policies invested "as is" for many years without reference to anyone else.
>
> …I PERSONALLY set up my first pension policy in 1988 that founded the AXA SSAS scheme that I also set up myself via MY parent Financial Services firm

that employed me and have personally managed the SSAS scheme throughout."

Summary of Friends Life's position

58. They have checked their records from 2005 onwards thoroughly and cannot find a letter from Mr Jeffery in December 2006 notifying them that he no longer required the services of Suntrust Ltd as the Special Trustee. In any case, the content of this letter refers to accountancy fees which is quite different to asking for the removal of Suntrust Ltd as Special Trustee (and the fees relating to this service).

59. They have also reviewed all the notes of their telephone conversations with Mr Jeffery and found no evidence of the call which he alleges took place in May 2007.

60. They have consequently correctly deducted the Special Trustee fees payable prior to 29 June 2013 from the Scheme. An appropriate fee is charged irrespective of whether Mr Jeffery took advantage of the services offered.

61. They normally sent Scheme correspondence to Mr Jeffery using the address held for the Managing Trustees on their records. If Mr Jeffery sent them correspondence from a different address, they would respond using this alternative address.

62. The addresses which they have used for sending letters to Mr Jeffery (about matters relating to the Principal Employer) have also varied because of the changes made to the Principal Employers over the years.

63. When the Principal Employer ceased to exist, the only contact address left for Mr Jeffery was the Woodland House one. They consequently updated their records so that all automated correspondence would be sent to this address.

64. Renewal packs were sent to incorrect addresses because the team which was responsible for issuing them had not been made aware of the changes to Mr Jeffery's contact details over the years. They would like to apologise to Mr Jeffery for any inconvenience caused by this oversight.

65. Between July 2006 and March 2007, Mr Jeffery raised the matter of the Scheme fees payable in his correspondence with them. In his fax dated 6 March 2007, he asked them for assistance to deal with a query from HMRC about his contributions to the Scheme. It would be unusual for Mr Jeffery to make such a request if he had told them in December 2006 that he no longer required the services of Suntrust Ltd.

Conclusions

66. One of the changes made to the SSAS rules from 6 April 2006 (A-day) was the removal of the requirement for a "pensioneer trustee." In practice, the pensioneer trustee (or another company in the same group), generally also carried out the

administrative, consultancy, actuarial, investment management and legal work for the SSAS.

67. If the Managing Trustees did not want Suntrust Ltd to take on the role of Special Trustee after A-day, they had to sign a form entitled "Implications on post removal administration" and confirm to Friends Life that they understood the ramifications of their decision including becoming responsible for the duties specified.

68. Prior to A-day a SSAS was also subject to the usual funding principles which applied to all approved schemes including an obligation on the employer to contribute and the contributions had to be actuarially justifiable by AVR. This requirement fell away after A-day when there was no limit on the amount of contributions which could be paid to a registered pension scheme (although there was a limit on the amount of tax relief which could be received).

69. The AVR with an effective date of 28 June 2004 should have been prepared by the Scheme Actuary and submitted to HMRC by 28 June 2005. The Scheme Actuary was unable to meet this deadline because he was not provided with the necessary Scheme accounts to prepare the AVR until 25 July 2005 by the Managing Trustees.

70. As at A-day, the Scheme Actuary had not yet finalised the AVR so the Managing Trustees had to appoint Suntrust Ltd as Special Trustee from this date until at least the AVR was completed in order to allow the Scheme Actuary time to complete the AVR. If the Managing Trustees had decided not to retain the services of Suntrust Ltd immediately after A-day, the Scheme Actuary would have had to resign (according to Friends Life's "Implications on post removal administration" form) and another actuary appointed to finish the AVR.

71. According to the letter which Friends Life sent Cater Allen Ltd on 12 April 2006, Suntrust Ltd remained a co-signatory of the Scheme bank account whilst acting as the Special Trustee.

72. After receiving a copy of the AVR in December 2006, Mr Jeffery says that he notified both Friends Life and Cater Allen Ltd in writing on 16 December that the Managing Trustees no longer required Suntrust Ltd to act as the Special Trustee. Mr Jeffery was unable to provide any evidence to corroborate his statement until very late in my investigation of his complaint.

73. Prior to this, he had been relying on Friends Life to supply the evidence in support of his complaint. Friends Life, after conducting a thorough search of the records, had not been able to find this letter.

74. The copy of the letter which Mr Jeffery says he sent by fax on 16 December 2006 refers to "Accounting" issues which Mr Jeffery said he could deal with himself. The letter is unsigned and there is in fact no evidence that it was sent. It was not followed up, nor was its receipt confirmed.

75. Furthermore, if Cater Allen Ltd had received the letter which Mr Jeffery says he sent them on 16 December, I consider it unlikely that they would subsequently have sought clarification in May 2013 from Friends Life about the role of Suntrust Ltd in the Scheme. I find, therefore, that the letter did not ask for Suntrust Ltd's removal, was probably not sent and, sent or not, was not received.

76. From A-day, since there was no need for a pensioneer trustee, the co-ownership and co-signatory arrangements were no longer required by tax law. If Mr Jeffery had wished to remove Suntrust Ltd as the Special Trustee from December 2006 as a co-owner of the Scheme's assets and as a co-signatory of the Scheme's bank account, he would have had to give new instructions and I have seen no convincing evidence that he did this until June 2013.

77. As a Managing Trustee of the SSAS, Mr Jeffery should have conducted his financial affairs with ordinary diligence and if, as he says, he had not been receiving any Scheme correspondence from Friends Life since 2006 to have contacted them to find out why he had not heard from them on a regular basis.

78. Furthermore the facts simply do not substantiate the allegation which Mr Jeffery has made in his letter of 29 May 2013 that he did not receive any correspondence from Friends Life after December 2006. Friends Life responded to his letter dated 8 January 2007 by informing him that the Trust Deed permitted fees which could not be met by the Principal Employer to be taken from the Scheme assets. In my view, Mr Jeffery would only have sent his letter of 2 February to Friends Life if he had received their response. There was clearly also subsequent correspondence between Friends Life and Mr Jeffery in March 2007 about an enquiry made by HMRC into a £100,000 special contribution which was paid into the Scheme.

79. Mr Jeffery says that a postal redirection service had been put in place at Woodland House since 2006 after he rented it out and if Friends Life had sent correspondence to him there, they would undoubtedly have received a response from him. But the evidence is clear that after December 2006, Friends Life did send several letters to Mr Jeffery using the Woodland House address. It seems somewhat unlikely to me that all these letters would have been lost in transit in the postal system so that Mr Jeffery received none of them. Furthermore Friends Life says that Mr Jeffery did not tell them where he was residing after moving out of Woodhouse House. It is unclear why Mr Jeffery decided to do this. If he had let Friends Life know his current home address, they could have contacted him directly rather than having to rely on the postal redirection service to send him their correspondence.

80. Finally, if Mr Jeffery had told them in December 2006 that he no longer wish to retain Suntrust Ltd as Special Trustee, it is inexplicable that he asked them for assistance with a HMRC query about his contributions to the Scheme in February 2007.

81. I do not therefor find that Friends Life had failed to carry instructions which Mr Jeffery says he gave them in December 2006 to remove Suntrust Ltd as Special Trustee of the Scheme. There were no such instructions.

82. That Friends Life sent letters to the wrong address for Mr Jeffery on several occasions is not in dispute. In my view, this was caused chiefly by Mr Jeffery failing to keep Friends Life informed of his current contact details for postal correspondence. Friends Life might have tried to make sense of the various correspondence addresses by asking which he preferred, but I do not think that they caused any significant harm to Mr Jeffery by not doing so.

83. I do not uphold Mr Jeffery's complaint.

Tony King

Pensions Ombudsman
19 May 2015